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*Submitted via email to: [martin.jones@fs.fed.us](mailto:martin.jones@fs.fed.us) and [martin.jones@usda.gov](mailto:martin.jones@usda.gov)*

July 26, 2019

**RE: Scoping Comments for the Proposed Siegel Creek Placer Exploration, Small NEPA Projects Proposal (July 2, 2019 Scoping Notice)**

Dear Mr. Jones:

Since 1973, the Idaho Conservation League (“ICL”) has been Idaho’s leading voice for clean water, clean air, and wilderness – values that are the foundation for Idaho’s extraordinary quality of life. As a 501(c)(3) nonprofit organization, ICL works to protect these values through public education, outreach, advocacy, and policy development. ICL is Idaho’s largest state-based conservation organization and represents over 30,000 supporters, many of whom have a deep personal interest in protecting Idaho’s human health and environment.

Attached below please find my comments on behalf of ICL regarding the proposed Siegel Creek Placer Exploration project.

Please do not hesitate to contact me at (208) 265-9565 or [mnykiel@idahoconservation.org](mailto:mnykiel@idahoconservation.org) if you have any questions regarding our comments or if I can provide you with any additional information on this matter.

Thank you for your time and consideration.

Sincerely,

Matthew Nykiel  
Conservation Associate

## Scoping Letter Lacks Necessary Information

ICL understands the USFS' interest in streamlining project evaluation, but the Siegel Creek Project as presented fails to meet the minimum standards for "Small NEPA" because the USFS did not present necessary information in the scoping letter. As such, the USFS must supply this information, however, as I explain in our comments below, ICL requests the USFS provide this information via an environmental impact statement ("EIS").

Federal regulations require scoping for all USFS proposed actions. 36 C.F.R. § 220.4(e)(1). And, scoping of USFS actions must comply with the requirements provided by 40 C.F.R. § 1501.7. Chapter 10 of the USFS NEPA Handbook ("Handbook") provides further guidance as to how the USFS must comply with federal scoping regulations. Relevant to the Siegel Creek Project are the Handbook's explanation of the five questions a scoping notice must address:

1. Who is proposing the project;
2. What actions will take place;
3. How will the actions be carried out;
4. Where will the actions be completed; and
5. When will the work take place.

USFS failed to sufficiently answer questions two and three in accordance with the law. The Handbook directs the USFS to focus as specifically as practicable on describing the activities of a proposed activity. Here, the USFS failed to do this at several points in the scoping letter. The discussion of the Project in the "Proposed Action" section of the scoping letter notes several activities without providing the details necessary for ICL or the public to provide directed, meaningful comments. For example, the USFS issued the following statements at pages 43-44 of the July 2, 2019 Scoping Notice:

1. "The operator would remove placer material from excavated trenches, the size, number and locations to be determined by Forest Service minerals personnel during future field visits with the operator.";
2. "Processing water would initially be drawn from Siegel Creek, then recirculated through a pair of excavated settling ponds, the size and locations to be reviewed by Forest Service specialists.";
3. "Mining activities under this proposal would take place within an RHCA. An appropriate buffer, determined by Forest Service specialists during onsite reviews, would be maintained between any surface disturbance and adjacent streams or wetland areas."; and
4. "A number of small trees need to be removed to clear the sites for excavation."

These statements fail to provide sufficient information from which ICL and the public can evaluate and comment on the potential impacts of, for example, the size, number, and locations of excavated trenches. Similarly, without knowing the number of trenches that will be excavated it is impossible for ICL to understand and comment on how many small trees will

have to be removed. Even small trees near Siegel Creek can have a significant influence on water temperatures, and this is critical because Siegel Creek is an impaired water body for temperature, as identified in Idaho's 2016 Integrated Report. And, the USFS' general description of the settling ponds is unhelpful – the size and location of these ponds is vital to understanding and commenting on the potential impacts to nearby natural resources. Lastly, it is impossible for ICL to determine whether an unspecified buffer and location of mining activities in the RHCA will be appropriate or protective of the resource.

The USFS failed to provide the necessary details, as required by federal regulation and the USFS NEPA Handbook, and ICL requests this information be provided and additional public comment be facilitated before advancing this project. As I explain below, ICL requests the USFS provide this information via an EIS, which is the most appropriate vehicle for this information and analysis.

### **“Category 8” Exemption is Improper for this Proposal and USFS Must Prepare an EIS**

It is improper for the USFS to use the categorical exclusion set forth at 36 C.F.R. § 220.6(e)(8) (“Category 8”) to approve the Siegel Creek Placer Exploration (“Project”), and the USFS must, instead, prepare an EIS pursuant to the National Environmental Policy Act (“NEPA”).

The USFS is prohibited from approving the Project via the Category 8 exemption because the USFS never analyzed the potential direct, indirect, and cumulative impacts of the category of actions contemplated by the Category 8 exemption. In *Sierra Club v. Bosworth*, the Ninth Circuit held that an agency's decision to establish a category of actions that are excluded from full NEPA review can only be made with a full understanding of the significance of the impacts resulting from application of the category. 510 F.3d 1016, 1027 (9th Cir. 2007) (“The Forest Service must perform this impacts analysis prior to promulgation of the CE.”) Specifically, “the Forest Service must perform a programmatic cumulative impacts analysis for the...CE.” *Id.* at 1029. In *Bosworth*, the Ninth Circuit invalidated the Forest Service's reliance on a categorical exclusion that was promulgated without a complete analysis of cumulative and other impacts. The Court then enjoined projects approved pursuant to that categorical exclusion. *Id.* At 1026-30. The Court explained:

“Relying solely on a project level analysis is inadequate because it fails to consider impacts from past, present, or reasonably foreseeable Fuels CE projects which may be located in close proximity, in the same watershed or endangered species habitat.”

*Bosworth*, 510 F.3d at 1027.

The Court also noted that the cumulative impacts analysis “is of critical importance in a situation such as here, where the categorical exclusion is nationwide in scope and has the potential to impact a large number of acres.” *Id.* at 1028.

The USFS' reliance on the Category 8 exemption in regards to the Project is similarly flawed. The USFS never performed a direct, indirect, or cumulative impacts analysis (or any of the required Endangered Species Act ("ESA") consultation and analysis) on Category 8 and the related provisions in Chapter 30 of the Forest Service Handbook regarding extraordinary circumstances. Like *Bosworth*, the USFS also never reviewed the significance factors required by NEPA in assessing whether its action – adopting a categorical exclusion and the extraordinary circumstances provision – may have significant impacts. Absent this review pursuant to NEPA and ESA, the USFS cannot rely on Category 8 and the related provisions in Chapter 30 for approval of the Project. Rather, ICL requests the USFS prepare an EIS, which would include a cumulative impact analysis of the three projects proposed under the Category 8 exemption in the July 2, 2019 Scoping Letter. An EIS would also provide the USFS an opportunity to conduct other required analyses, including an analysis of any past, present, or reasonably foreseeable impacts from the projects currently under consideration. These impacts include but are not limited to:

1. Road construction;
2. Timber management;
3. Mineral exploration and development;
4. Livestock management;
5. Travel management; and
6. Wildfire, prescribed fire, or other activities.

In addition, the combined cumulative effects of all prospecting and mining operations in the vicinity must be disclosed in the environmental analysis. The Siegel Creek Project area lies within an area of heavy historic mining operations, such as the American Eagle Mine.

### **Threatened and Endangered Species**

ICL requests the USFS submit a biological assessment on all possible threats to listed species in the project area, and that the USFS consult with U.S. Fish and Wildlife Service and National Marine Fisheries Service. No incidental take permit should be allowed.

Siegel Creek is designated critical habitat for federally listed species, including Snake River steelhead. And, the Idaho Department of Environmental Quality has documented a variety of fish species in its Beneficial Use Reconnaissance Project Data Viewer that inhabit the creek including chinook salmon, cutthroat trout, brook trout, and rainbow trout, among others. Despite this, the USFS failed to provide a habitat assessment of the project area in the scoping notice evaluating the impacts to these and other sensitive species. While pumping activities would require a 1/8" screen over the pump intake hoses (a requirement ICL wholeheartedly supports), the USFS made no effort to address the project's potential adverse effects to water temperature and remaining in-stream quantities.

This Project cannot be approved without a biological assessment and consultation with USFWS and NMFS.

## **Water Quality**

Mining exploration activities have a well-documented history of adversely impacting water quality and fish populations. The proposed action may be potentially incompatible with aquatic species inhabiting this watershed. Weed-free straw bales should line any drainages to protect streams from sedimentation and be removed upon completion of operations.

The effects of mining exploration activities on surface water and groundwater quantity and quality need to be determined for a full range of flow conditions. This geochemical analysis should include the following factors:

1. Pre-existing water quality issues from previous mining activities;
2. Sedimentation from roads and trails;
3. Transportation of hazardous or toxic materials near streams;
4. On-site water needs;
5. Source of water;
6. The depth and flow of water table;
7. The potential for household chemicals and toxins to leach into surface and ground waters;
8. Water capture and subsequent leakage by trenches;
9. Wastewater discharge from site; and
10. Stormwater runoff.

ICL recommends conducting a baseline water quality analysis during low-flow conditions for water sources in the project area, as well as a baseline analysis downstream from the project locations. A baseline analysis in these areas will help the USFS more accurately identify risks to water quality and quantity, as well as monitor for contamination during the project activities.

ICL also recommends that the USFS monitor water quality downstream of the operations for seepage and turbidity. If visible turbidity downstream from the area is triggered by the project, operations should cease for further evaluation. Additionally, we recommend prohibiting mineral sampling and/or vegetation removal within at least 75 feet of stream channels, consistent with other similar proposals.

## **Water Rights**

Because the applicant plans to draw water from Siegel Creek a water right must be sought and obtained from the Idaho Department of Water Resources. The Forest Service should require proof that a water right has been obtained from the Idaho Department of Water Resources *prior* to approving any plan of operations, or initiating any ground-disturbing activities. The timing of water withdrawal should be defined to avoid impacts to aquatic organisms and sensitive, threatened, and endangered species. A water right is necessary regardless if processing takes place on or off of federal lands.

## **Riparian Habitat and Conservation Area Protection**

Because this Project proposes mining activities within RHCAs ICL requests the USFS provide the necessary analysis and reporting to comply with regulations and guidance regarding RHCAs.

All operations must comply with the protective standards and regulations of INFISH, concerning mining, road construction, and tree removal. No Forest Plan amendments to suspend these requirements should be considered. If any discharge from mining activities is anticipated to occur, effects to sensitive, threatened, and endangered species represents an extraordinary circumstance, justifying the preparation of an environmental assessment or environmental impact statement. The project analysis and decision document for any project within RHCAs should articulate project design features that demonstrate consistency with the Riparian Management Objectives contained in the INFISH and how they will be maintained and restored following project implementation.

## **Noxious Weeds**

ICL requests the USFS provide further clarity and requirements to ensure the proposed project does not propagate noxious weeds. Vehicles and equipment serve as vectors for the spread of noxious weeds when proper inspection and cleaning are not practiced to limit their spread. Disturbed soil needs to be stabilized to prevent erosion and expansion of noxious weeds. All equipment should be inspected, cleaned, and washed prior to the operator entering public lands. Work crews trained in noxious weed recognition and removal should patrol the project area and mechanically remove any weeds or microtrash.

## **Reclamation and Bonding**

The scoping letter failed to explain the reclamation and bonding requirements with sufficient detail and clarity, and ICL requests the USFS incorporate and apply the following discussion of these requirements if it advances the Project.

USFS regulations at 36 C.F.R. § 228 require the Forest Service to establish an adequate reclamation bond for mining operations. Bonding costs need to be detailed in the environmental analysis for each alternative.

The bond must be substantive enough to cover the worst possible impacts to the human and natural environment and at a minimum, take into consideration:

1. Possible spills of fuels and other hazardous materials;
2. Impacts to the ecosystem;
3. Road decommissioning;
4. Mine drainage treatment in perpetuity; and
5. Monitoring.

Bonding costs should be calculated according to USFS pricing, including the cost of renting and transporting equipment and wages for all workers and supervisors. Alternatively, a third-party contracted by the Forest Service could calculate the bonding costs. In any event, the operator should not calculate the bonding costs.

The environmental analysis needs to describe the reclamation process and all associated costs in detail. This analysis should include the volume and type of material to be moved, equipment needed, location for stockpiling, and sequence for reclamation. To the extent practical, reclamation activities should take place concurrently with the mining operation.

## **Monitoring**

ICL has encountered numerous mining projects that have violated best management practices (“BMPs”) and operating plans. A formal monitoring plan should be developed in relation to each of these projects. The monitoring plan should be described in the decision document and the full plan should be included in the project file.

Monitoring should be conducted at specified intervals throughout the mining operation and reclamation. The Forest Service should establish noise limits such that disturbance to surrounding wildlife and property owners is minimized, and require the operator to abide by these limits. Seasonal limitation may also apply, where species-specific habitat needs could be affected by the project.